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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/924,471	08/09/2001	Theodore Davidov	BHT-3143-3	2649

7590 05/05/2004

DOUGHERTY & TROXELL  
SUITE 1404  
5205 LEESBURG PIKE  
FALLS CHURCH, VA 22041

EXAMINER
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HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 05/05/2004

14

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/924,471

Applicant(s)

DAVIDOV ET AL.

Examiner

Robin A. Hylton

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-9 and 11-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-9 and 11-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 May 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 5, 2004 has been entered.

### ***Drawings***

2. The drawings were received on May 27, 2003. These drawings are approved by the examiner. See draftsman's comments on attached form PTO-948.

### ***Claim Rejections - 35 USC § 102***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1,2,4,7-9,11,14, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Heidorn.

The spoon 1, an auxiliary handle extension portion 2, and the lid are cast in a mold and integrally formed as one piece with the frangible tabs connecting the both the spoon and the auxiliary handle extension portion to the lid. Wherein the spoon is molded with the lid and no specific teaching of variable thickness is set forth in the disclosure, it is inherent that the food engaging portion of the spoon is of "substantially uniform thickness". The spoon 1 is a one-piece eating utensil that fits within one opening in the lid.

Regarding claims 7, 8, 14, and 15, the protective sheet is adhesively attached to the cover. The protective sheet is permanently attached to the cover if not intentionally removed therefrom. Conversely, it is removably attached to the cover should the end user remove it.

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***Claim Rejections - 35 USC § 103***

5. Claims 5,6,12, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heidorn in view of Torniainen (US 6,371,324).

Heidorn teaches the claimed lid except for the eating utensil being a fork or a knife.

Torniainen teaches a lid having a detachable eating utensil wherein the utensil can be a spoon as seen in figure 1 or can be a fork, spork, or knife as described in col. 5, lines 40-42 and col. 13, lines 7-10.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the teaching of a fork and a knife as an eating utensil removably attached in the opening of the lid of Heidorn. Doing so provides alternative utensils as appropriate for the food contained within the associated container.

6. Claims 1,2,4,7,8,9,11,14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heidorn in view of Schoenmakers (WO 95/07847).

Wherein it can be argued Heidorn does not teach a one-piece eating utensil, it would have been obvious to one of ordinary skill in the art at the time the invention was made to eliminate the secondary handle extension 2 and form a one-piece eating utensil as taught by Schoenmakers. Doing so would have been an obvious matter of design choice to save on manufacturing costs, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art.

7. Claims 5,6,12, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 1 and 9 above, and further in view of Torniainen.

Heidorn as modified by Schoenmakers teaches the claimed lid except the eating utensil being a fork or a knife.

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Torniainen teaches a lid having a detachable eating utensil wherein the utensil can be a spoon as seen in figure 1 or can be a fork, spork, or knife as described in col. 5, lines 40-42 and col. 13, lines 7-10.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the teaching of a fork and a knife as an eating utensil removably attached in the opening of the lid of Heidorn. Doing so provides alternative utensils as appropriate for the food contained within the associated container.

### ***Response to Arguments***

8. Applicant's arguments filed February 5, 2004 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a single opening in the top cover wall) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Regarding the structure of the one-piece eating utensil of Heidorn, the spoon 1 is a one-piece eating utensil having a bowl portion for engaging the food of the associated container. The remaining portion of the spoon is a handle portion grippable by the user for removing food from the container. In fact, the length of this handle appears to correspond to the length of the handle portion illustrated in the drawings of the instant invention, and thus is as "configured to be gripped by a hand of the user" as much as that of the instant invention. Further, the auxiliary handle portion 2 disclosed by Heidorn is not required for using the spoon 1. It is helpful for removing the contents at the bottom of the container, but is not necessary.

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Regarding the food engaging portion of the eating utensil, wherein the patent to Heidorn teaches the eating utensil is molded with the cover. Since no teaching of supporting ribs is set forth, the food engaging portion would inherently have a "substantially uniform thickness".

Regarding the combination of Heidorn and Schoenmakers, applicant has misinterpreted the reason for combination. It is not implied or stated that Schoenmakers teaches an eating utensil with a food engaging portion having a "substantially uniform thickness". Schoenmakers has been applied solely for its teaching of a one-piece eating utensil. Thus, the combination is proper and does not teach away from the claimed invention as asserted by applicant.

Regarding the combination of Heidorn and Torniainen, the combination is proper and renders the claimed invention obvious as set forth in the rejection(s) above. Applicant's remarks are directed to feature not set forth in the claims, i.e., a single opening in the top wall.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bernhardt teaches a cover having a membrane permanently attached thereto.

10. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

11. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

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I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-7306 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_


12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Technology Center 3700 Customer Service Office at (703) 306-5648.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH  
April 30, 2004

  
Robin A. Hylton  
Primary Examiner  
GAU 3727